

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 99-4785

LUIS GUTIERREZ-SAENZ, a/k/a Ramon  
Bravo,  
Defendant-Appellant.

Appeal from the United States District Court  
for the Middle District of North Carolina, at Durham.  
James A. Beaty, Jr., District Judge.  
(CR-99-128)

Submitted: February 24, 2000

Decided: March 3, 2000

Before MOTZ and KING, Circuit Judges, and  
BUTZNER, Senior Circuit Judge.

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Affirmed in part and dismissed in part by unpublished per curiam  
opinion.

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**COUNSEL**

Louis C. Allen III, Federal Public Defender, William S. Trivette,  
Assistant Federal Public Defender, Greensboro, North Carolina, for  
Appellant. Walter C. Horton, Jr., United States Attorney, Arnold L.  
Husser, Assistant United States Attorney, Greensboro, North Caro-  
lina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

Luis Gutierrez-Saenz appeals from his conviction of and sentence imposed for reentry into the United States after having been deported. Gutierrez-Saenz's attorney filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), in which he argues that the sentence imposed was excessive, but represents that there are no arguable issues of merit in this appeal. Gutierrez-Saenz was notified of his right to file a supplemental brief, but has not done so. Because the sentence imposed was within the proper guideline range and we can discern no error on this record, we affirm in part and dismiss in part.

Gutierrez-Saenz contends that the district court abused its discretion in imposing the eighty-seven month term of imprisonment. We find that Gutierrez-Saenz's guideline range was properly calculated pursuant to the U.S. Sentencing Guidelines Manual (1998). Because Gutierrez-Saenz's sentence is within a correctly calculated guideline range and does not exceed the statutory maximum penalty for his crime, this court lacks authority to review the district court's discretionary decision as to where to impose sentence within the guideline range. See United States v. Porter, 909 F.2d 789, 794 (4th Cir. 1990).

Pursuant to Anders, this court has reviewed the record for potential error and has found none. Accordingly, we dismiss that portion of the appeal challenging the imposition of a sentence within the guideline range and affirm the conviction and sentence in all other respects. We deny counsel's motion to withdraw. This court requires that counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may again move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argu-

ment because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART; DISMISSED IN PART